IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc. No.74774-M of 2006
Date of Decision:- 18.04.2007

Harkesh ....Petitioner(s)

through
Mr.S.S.Siao, Advocate

vs.

State of Haryana etc. ....Respondent(s)

through
Mr.R.D.Sharma, DAG, Haryana.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

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SURYA KANT, J.

In this petition under Section 482 Cr.P.C., the petitioner impugns the order dated 12.10.2006 (Annexure P-1) whereby he has been denied release on furlough on the ground that he has not undergone three years actual sentence continuously.

In the written statement also, the respondents have taken the same plea.

Temporary release of a prisoner on 'furlough' is governed by Section 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 (in short 'the Act') which reads as follows:-

"4.Temporary release of prisoners on furlough.-(1) The State Government or any other officer authorised by

it in this behalf may, in consultation with such other officer as may be appointed by the State Government, by notification, and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who has been sentenced to a term of imprisonment of not less than four years and who -

(a) has, immediately before the date of his temporary release, undergone continuous imprisonment for a period of three years, inclusive of the pre-sentence detention, if any;

(b) has not during such period committed any jail offence (except an offence punished by a warning) and has earned atleast three annual good conduct remissions:

Provided that nothing herein shall apply to a prisoner who -

(i) is a habitual offender as defined in sub-section(3) of section 2 of Punjab Habitual Offenders (Control and Reform) Act,1952; or

(ii) has been convicted of dacoity or such other offence as the State Government may, by notification, specify.

(2) The period of furlough for which a prisoner is eligible under sub-section(1) shall be three weeks during the first year of his release and two weeks during each successive year thereafter.

(3) Subject to the provisions of clause(d) of sub-section(3) of section 8the period of release referred to in sub-section

(1) shall count towards the total period of the sentence undergone by a prisoner.

On a plain reading of the Statute, it is apparent that a prisoner who has been sentenced to a term of imprisonment of not less than four years, can be released on 'furlough' subject to the conditions that:- (i) immediately before the date of his temporary release, he has undergone continuous imprisonment for a period of three years inclusive of the pre-sentence detention, if any; (ii) has not committed any jail offence during such period and has earned at least three annual good conduct remissions; (iii) is not a habitual offender; and (iv) has not been convicted of dacoity or such other offence as the State Government may, by notification, specify.

Adverting to the facts of the present case, it may be mentioned that the petitioner was arrested on 31.8.1994 in a case arising out of F.I.R.No.478 dated 31.8.1994 under Sections 304(1)/34 IPC registered at Police Station City Rohtak and upon conviction on 4.2.1997, he was sentenced to undergo life imprisonment.

The petitioner preferred a criminal appeal before this Court. During the pendency of the appeal, the petitioner was released on bail on 27.7.2000. The petitioner's appeal was partly allowed by this Court vide judgment dated 9.1.2006 to the extent that the quantum of sentence was reduced from life imprisonment to 10 years' rigorous imprisonment. The petitioner thereafter surrendered before the Jail Authorities on 26.4.2006 to undergo remainder of the sentence.

The petitioner then sought his temporary release on 'furlough' on the ground that he had spent more than 3 years in custody after his conviction and before he was released on bail on 27.7.2000 during the

pendency of the criminal appeal, therefore, he fulfills the conditions prescribed in Section 4 (1)(a) of the Act.

On the other hand, the respondents took the stand that a prisoner is required to undergo continuous imprisonment for a period of three years immediate before the date of his temporary release on furlough and since the petitioner did not fulfill the said condition, his case was rejected.

It is one of the cardinal principles of interpretation of Statutes that the legislative intentment contained therein should be achieved. There is no quarrel that the object behind temporary release of a prisoner on 'furlough' is to reward him for his good conduct and behaviour while in jail as well as to give a break to the continuity of his imprisonment so that his relationship as a 'social being' with his family, relatives, friends and the society at large, is not severed. It is in this backdrop that the expression "immediately before the date of his temporary release" as contained in Section 4(1)(a) of the Act needs to be interpreted. If one reads Clauses (a) and (b) of Sub-Section (1) of Section 4 of the Act, there remains hardly any doubt that 'furlough' is a special concession for which a prisoner is required to complete and wait three years' continuous imprisonment immediate before thereof.

The aforesaid condition is in consonance with the legislative object sought to be achieved. The fact that the petitioner has remained on bail for a sufficient long period before he surrendered on 26.4.2006 and, thus, the object of releasing on 'furlough' has already been achieved, disentitles him from claiming the concession of 'furlough' until he undergoes another term of at least three years' sentence.

For the reasons afore-stated, I do not find any exception to the view taken by the respondents. Consequently, this petition is dismissed.

April 18, 2007 **(SURYA KANT)**
poonam **JUDGE**